Whereas, major neurocognitive disorders, including Alzheimer’s disease and other dementias, have become increasingly common as our population is aging; and

Whereas, behavioral and psychological symptoms of dementia are behavioral changes (i.e. paranoia, delusions, auditory/visual hallucinations, physical and verbal aggression) that impact the majority of patients with major neurocognitive disorders and are typically treated with a combination of medications (i.e., antidepressants and antipsychotic medications) and behavioral interventions; and

Whereas, despite the 2007 FDA warning advising increased risk of death in older adults with dementia taking antipsychotics, these medications are still used following discussion of the risks and benefits as supported by the American Psychiatric Association clinical practice guidelines (2020) which noted: “Aggression, agitation, and psychosis are highly prevalent in patients with Major Neurocognitive Disorder and cause great suffering. Their presence is associated with a worse prognosis. While non-pharmacological approaches are generally recommended as first-line treatments, they are often ineffective in the treatment of aggression, agitation and psychosis, and the judicious use of antipsychotic medications may be appropriate”; and

Whereas, the Centers for Medicaid and Medicare Services (CMS) initiated a 2012 policy reducing all psychotropic treatments with a focus on antipsychotic medications and imposing strict penalties for antipsychotic use without a diagnosis of schizophrenia, Tourette’s, or Huntington’s disease. As a result of this policy, psychiatrists report medically inappropriate tapers and discontinuation of long-term stable antipsychotic regimens often leading to behavioral decompensation, unanticipated nursing home discharge to community hospitals where the patient is boarded for weeks to months before a new placement is identified; and

Whereas, despite efforts since 2013 to encourage CMS measure adjustment and in light of the 2021 OIG report highlighting measure deficiencies, CMS has not agreed to policy changes that would differentiate appropriate and inappropriate antipsychotic prescribing based on accepted clinical guidelines; and

Whereas, state legislatures have taken up the mantle of this overly restrictive CMS policy by proposing laws that further incentivize nursing homes to discriminate against people living with mental illness by promoting reduced access to psychotropics and criminalizing potential errors in the medical record documentation specific to the use of psychotropics; and
Whereas, our AMA has established substantial policy on the importance of the patient-physician relationship in clinical decision-making being free from legislative interference and criminalization as outlined in AMA Policies H-160.954, H-160.946, H160.999, and H-80.992, yet the specific wording only references federal efforts, where broader language would allow our advocacy teams more flexibility when relevant state issues occur; therefore be it

RESOLVED, that our American Medical Association work with key partners to advocate that CMS revise the existing measure for psychotropic prescribing in nursing homes to ensure nursing home residents have access to all medically appropriate care (Directive to Take Action); and be it further

RESOLVED, that our AMA amend policy H-160.954 by insertion as follows: (1) Our AMA continues to take all reasonable and necessary steps to ensure that errors in medical decision-making and medical records documentation, exercised in good faith, do not become a violation of criminal law. (2) Henceforth our AMA opposes any future legislation which gives the federal, state, and local government the responsibility to define appropriate medical practice and regulate such practice through the use of criminal penalties. (Modify Current HOD Policy)

Fiscal Note: Minimal - less than $1,000

Received: 9/25/2023

REFERENCES


RELEVANT AMA POLICY

Criminalization of Medical Judgment H-160.954
(1) Our AMA continues to take all reasonable and necessary steps to ensure that errors in medical decision-making and medical records documentation, exercised in good faith, do not become a violation of criminal law. (2) Henceforth our AMA opposes any future legislation which gives the federal government the responsibility to define appropriate medical practice and regulate such practice through the use of criminal penalties. [Sub. Res. 223, I-93; Reaffirmed: Res. 227, I-98; Reaffirmed: Res. 237, A-99; Reaffirmed and Appended: Sub. Res. 215, I-99; Reaffirmation A-09; Reaffirmed: CEJA Rep. 8, A-09; Reaffirmation: I-12Modified: Sub. Res. 716, A-13; Reaffirmed in lieu of Res. 605, I-13; Reaffirmed: Res. 250, A-22; Reaffirmed: Res. 252, A-22]

The Criminalization of Health Care Decision Making H-160.946
The AMA opposes the attempted criminalization of health care decision-making especially as represented by the current trend toward criminalization of malpractice; it interferes with appropriate decision making and is a disservice to the American public; and will develop model state legislation properly defining criminal conduct and prohibiting the criminalization of health care decision-making, including cases involving allegations of medical malpractice, and implement an appropriate action plan for all components of the Federation to educate opinion

**Opposition to Criminalizing Health Care Decisions D-160.999**

Our AMA will educate physicians regarding the continuing threat posed by the criminalization of healthcare decision-making and the existence of our model legislation “An Act to Prohibit the Criminalization of Healthcare Decision-Making.” [Res. 228, I-98; Reaffirmed: BOT Rep. 5, A-08; Reaffirmation: I-12; Reaffirmed: BOT Rep. 9, A-22]

**Report Regarding the Criminalization of Providing Medical Care H-80.992**

Our American Medical Association will study the changing environment in which some medical practices have been criminalized including: the degree to which such criminalization is based or not based upon valid scientific findings, the degree to which this is altering the actual practice of medicine due to physician concerns and personal risk assessment, and the degree to which hospitals and health care systems are responding to this rapidly changing environment, with report back to the HOD no later than the November 2023 Interim meeting. [Res. 015, A-23]

**Appropriate Use of Antipsychotic Medications in Nursing Home Patients D-120.951**

Our AMA will: (1) meet with the Centers for Medicare & Medicaid Services (CMS) for a determination that acknowledges that antipsychotics can be an appropriate treatment for dementia-related psychosis if non-pharmacologic approaches have failed and will ask CMS to cease and desist in issuing citations or financial penalties for medically necessary and appropriate use of antipsychotics for the treatment of dementia-related psychosis; and (2) ask CMS to discontinue the use of antipsychotic medication as a factor contributing to the Nursing Home Compare rankings, unless the data utilized is limited to medically inappropriate administration of these medications. [Res. 523, A-12; Appended: Res. 708, A-19]

**Long-Term Care Prescribing of Atypical Antipsychotic Medications H-25.989**

Our AMA: (1) will collaborate with appropriate national medical specialty societies to create educational tools and programs to promote the broad and appropriate implementation of non-pharmacological techniques to manage behavioral and psychological symptoms of dementia in nursing home residents and the cautious use of medications; (2) supports efforts to provide additional research on other medications and non-drug alternatives to address behavioral problems and other issues with patients with dementia; and (3) opposes the proposed requirement that physicians who prescribe medications with “black box warnings on an off-label basis certify in writing that the drug meets the minimum criteria for coverage and reimbursement by virtue of being listed in at least one of the authorized drug compendia used by Medicare.” [Res. 819, I-11; Reaffirmed: CMS Rep. 1, A-21]